

FAO LAND TENURE STUDIES

8

ISSN 1020-3117

**Access to rural land
and land administration
after violent conflicts**



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This One



6TUB-L4S-T34S

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Rome, 2005

Reprinted 2005, 2008

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ISBN 978-92-5-105343-0

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FAO Land Tenure Studies

FAO's Land Tenure Studies are concise presentations on the often complicated and controversial subject of land tenure, especially as it relates to food security, poverty alleviation and rural development. These studies do not seek to be exhaustive but instead reflect what FAO and its many international collaborators have discovered are "good practices" for a particular aspect of land tenure and its administration. The studies cover various aspects of improving access to land and other natural resources and increasing tenure security. They address the role of land tenure in rural development, gender and access to land, improved access to land through leasing arrangements, rural property taxation systems, land consolidation, and land access and land administration after violent conflicts.

More information on the Land Tenure Studies, and on FAO's work in land tenure, is available at:

http://www.fao.org/sd/LTdirect/Ltstudies_en.htm

http://www.fao.org/sd/IN1_en.htm

Acknowledgements

Guidelines prepared by David Palmer, Nigel Thomson, Paul De Wit, Jonathan Lindsay, Mika-Petteri Töhrönen, Pamela Pozarny and Paul Mathieu.

Review Panel: Bengt Andersson, Clarissa Augustinus, Francisco Barquero, Florence Egal, Vladimir Evtimov, Annie Kairaba-Kyambadde and Jon Unruh.

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Foreword

The present volume is part of a series of Land Tenure Studies produced by FAO's Land Tenure Service of the Rural Development Division. Land tenure arrangements are a key to food security and sustainable rural development. Equitable and secure access to land, especially for the rural poor, is a crucial factor for reducing poverty and hunger, for increasing agricultural productivity, and for improving rural conditions. Effective land tenure institutions are needed to administer who has rights to what natural resources for which purposes, for how long, and under what conditions.

Violent conflicts typically cause significant changes to land tenure and its administration. A widespread conflict lasting for a number of years may result in successive waves of displacement of people. People may lose their land because they have been forcibly evicted, or they may abandon their land because of fear of violence. Those displaced are forced to seek land to settle, either within the country as Internally Displaced Persons, or externally as refugees. People living in safer areas may have lost access to their land with the arrival of those who are displaced.

At the end of a conflict, many people return home only to find that others occupy their property. In some cases such occupants may not have a valid claim. In many other cases the waves of displacement result in several people having legitimate claims to the same parcel of land. Many people will not be able to return to their original home areas and will have to settle elsewhere.

Providing secure access to land is particularly complex in situations following violent conflicts. A wide range of people and organizations require access to land for a variety of purposes. In some cases temporary access is required; in other

cases more permanent arrangements are needed. Resolving claims to land and ensuring access to it are often hampered by a weak capacity of central and local levels of government. New processes for managing land restitution and resettlement programmes must often be designed and implemented. Critical infrastructure must be replaced, land records must be recovered or recreated, and technical and managerial expertise must be re-established.

This volume is intended to support land tenure and land administration specialists who participate in the recreation of land tenure and its administration in countries following violent conflicts. The book, like others in the series, does not seek to be exhaustive but rather reflects what FAO and its many collaborators have discovered are “good practices”. FAO’s Rural Development Division looks forward to continuing collaboration with its larger audience.

Parviz Koohafkan
Director
Rural Development Division

1. Introduction

- 1.1 Secure access to land is a crucial factor in the eradication of hunger and poverty. Providing secure access to land is frequently not easy, and it is particularly complex in situations following violent conflicts. Getting the answer right can go directly to the matter of achieving sustainable peace. Addressing emergency humanitarian needs after a conflict requires finding places for people to live in the short-term under conditions that provide safety for them and which do not threaten the rights to land of others. Building longer-term social and economic stability requires finding more permanent solutions to where people can live and work. Yet too often, initiatives for recovery and reconstruction are planned without considering the need to resolve land tenure problems.
- 1.2 Violent conflicts arise for many reasons. Some violent conflicts have their roots in disputes over access to land. In many other cases, land tenure is not a fundamental cause of violence although land disputes may add to the tensions. Regardless of the origin of a conflict, widespread violence over a period of years results in the massive displacement of much of the population. People become landless. Vulnerable groups almost invariably include women and children, and may also include ethnic or political minorities. At the end of a conflict, access to land is required by people who were displaced. Many people try to get back their own land. They may face several competing, legitimate claims to the same land as a result of successive waves of displacement. Many others may not be able to recover their lands and have to settle elsewhere.
- 1.3 The effects of violent conflicts are usually widespread in a country but they can be particularly severe in rural areas. Conflicts often occur in poor countries where much of the population is rural: poor countries have the characteristics of a relatively low level of urbanization and a relatively high percentage of the labour force working in agriculture. Widespread conflicts in poor countries can thus result in the displacement of vast numbers of

people in rural areas. Following the conflict, a lack of roads and other rural infrastructure and the difficulty of working in rural areas may limit the attention paid to rural problems.

- 1.4 Recovery from a violent conflict is hugely difficult. It must address the mass dispersal of people from their lands, widespread death and injury within the population, destruction of critical infrastructure, collapse of the legal system, loss of records and expertise, widespread mistrust, and continued fear and threat of violence. As most countries emerging from conflict were already poor before their spiral downwards into violence, they have limited capacity to address the problems of access to land and land administration.
- 1.5 Assisting countries to provide access to land and to recreate land administration systems after conflicts is an important part of FAO's work in land tenure. The Organization has a long record of work in this area, and an initial function was the resolution of land tenure issues in Europe following the Second World War. More recent experience of the Organization and its partners has been used in the preparation of this guide. It aims to provide practical advice to land tenure and land administration specialists who work with FAO in the recreation of systems of land tenure and land administration in countries following conflicts. It also aims to assist people who prepare emergency, recovery and reconstruction projects by identifying land tenure issues that might be considered in the design of projects.
- 1.6 The guide concentrates on aspects which are typically found in rural areas following conflicts. However, it recognises that land administration should be implemented in a holistic manner that addresses rural-urban linkages, and it identifies other issues such as the need to provide shelter and housing. Many of the new policies, laws and administrative structures to be put in place at the end of the conflict are likely to cut across the urban and rural landscapes.
- 1.7 Every conflict situation will be different but there are often many common characteristics. This guide looks mainly at these common issues. It can

provide only general guidance, and its contents should be assessed and applied in a way that is appropriate to each situation. Some circumstances, and suggested responses to them, may not apply at all in a given setting.

- 1.8 For the purpose of this guide, the post-conflict period starts when the main hostilities have ceased to the point that international assistance can be provided for emergency activities, recovery and reconstruction. While there is a reasonable degree of security, the environment is not necessarily safe, and conflicts may re-emerge.
- 1.9 In chapter 2, the guide provides an overview of general conditions such as death and violence, hunger and starvation, and the destruction of crops, homes, infrastructure and government facilities. This chapter is oriented largely towards land tenure and land administration specialists who have limited experience with violent conflicts, and it aims to inform them of the conditions under which they might work.
- 1.10 Chapter 3 discusses the specific conditions of access to land and land administration that typically exist after a conflict. Information on land tenure and its administration is oriented towards designers of emergency projects who may have limited experience with land tenure. The chapter provides project designers and land tenure and land administration specialists with a description of characteristics that commonly exist in post-conflict settings. It identifies the importance of addressing land tenure issues following conflicts.
- 1.11 As hostilities come to an end, international agencies may carry out the first missions to assess the situation. Land tenure and land administration specialists should be included in such early assessment missions to identify and analyse issues of access to land and land administration, and to identify possible actions. Chapter 4 outlines issues that should be addressed in such missions.
- 1.12 Following preliminary assessment missions, the first interventions are likely to focus on providing services of an emergency, humanitarian nature. Chapter

5 identifies key questions on land tenure and its administration that may need to be addressed during this stage. This work should form the basis for the identification of priorities, and for the design of short-term actions that can be implemented relatively quickly.

- 1.13 As the emergency activities conclude, there is the opportunity to plan for the development of policy. This may include dealing with access to land and land administration within a broad policy framework rather than through a number of isolated policy initiatives. It is likely to include a number of narrower policy decisions such as what types of land claims will be dealt with, who will be eligible to submit claims, and what procedures will be used. Chapter 6 outlines key questions that should be addressed regarding restitution, resettlement and the establishment of an operational land administration system.
- 1.14 The consolidation of peace efforts allows for land policies, both broad and narrow, to be implemented. Chapter 7 outlines key questions that could be encountered, particularly with the monitoring and evaluation of the effects of such policies. Finally, chapter 8 summarises the roles that land administrators may play as advisors throughout the process.

2. Post-conflict settings

- 2.1 This guide addresses major conflicts of sustained violence that result in the death and injury of much of the population, and the massive movement of people from their lands. They may also result in the substantial destruction of infrastructure and the breakdown of government institutions. The effects are severe, partly because the conflicts can last for many years.
- 2.2 This chapter is oriented towards land tenure and land administration specialists who may be required to provide support on projects, but who have limited direct experience with violent conflicts. It outlines the nature of violent conflicts. It describes the characteristics typically found in a post-conflict setting, and the effects that prolonged violence and extensive displacement may have on a society.

VIOLENT CONFLICTS AND THEIR CAUSES

- 2.3 Most violent conflicts affect poor countries but the relationship between poverty and violence is not straightforward. The causes of violent conflicts are typically complex. Some conflicts are linked to competition for land and other natural resources. Growth in population without increases in productivity, or new opportunities to acquire income from non-agricultural activities, typically results in increased pressure on natural resources. The resulting environmental degradation may cause still greater competition for the remaining natural resources. As access to land is often related to social identity, the rights to land of people may be used in the political exploitation of tension. Where ownership of land is concentrated in the hands of a minority, whether based on class or ethnicity, the demands for land reform may lead to a violent struggle. Tenure issues are essentially political, and tenure relationships are imbedded in, and affected by, class or ethnic relationships. Tenure issues are liable to become politicized, and political issues are liable to become ethnicized.
- 2.4 Other violent conflicts arise without the scarcity of land and other natural resources being a fundamental cause, although land disputes may become

merged with other issues, and different sides in the conflict may attempt to gain control over natural resources such as oil, diamonds and timber in order to finance their activities. A broad factor of many conflicts is the social, economic and political discrimination against groups in society, whether minorities or a majority of the population. Such discrimination can often have an impact on land tenure, e.g. through “ethnic cleansing” in specific areas. Bad governance is another common factor. Challenges to the legitimacy of the state may come from movements seeking independence, or from groups wishing to overturn the government. Grievances may be fed by experiences of arbitrary rule, favouritism, corruption and extortion. Conflict may also be fuelled by external factors such as the instability of a neighbouring country.

- 2.5 Grievances, even if held by many in a society, seldom lead to violence without mobilization by leaders. Divisions such as ethnicity and religion do not often result in violence by themselves. However, such divisions may be exploited by leaders who are ideologically inspired to address poverty and political injustices, or inspired by greed and the ability to extract wealth out of the conflict. These divisions can come to involve land in cases where social groups are connected to specific areas such as ethnic homelands or home territories.
- 2.6 The immediate cause of conflict often arises from leaders who are not willing to negotiate a peaceful resolution. The actual causes of the conflict may be far harder to diagnose: a combination of factors is often responsible and it may be difficult or impossible to assess their relative importance. A certain mix of factors might lead to violence in one society but not in another. A situation that has been stable for years may become violent because of a combination of factors such as external interventions, changes in the weather, changes in local leadership, and widening economic disparities. Other changes such as increasing population and migration, and the provision of infrastructure and social facilities such as education, may cause shifts in social consensus. The accumulation of sources of tension arising from such shifts may result in increased conflict between those who benefit from the changes and those who lose.

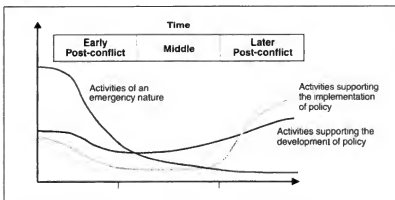
- 2.7 As a conflict escalates, it may go beyond the capacity of the leaders to control it. The violence may entrench the divisions in society, hardening the interests and positions of the various groups. Because of the spatial nature of violent conflict and land tenure, it may be difficult to separate the two in terms of cause and conduct of a conflict. Violence may not cease with the resolution of an original grievance; instead, it may continue around newly defined positions.

THE START AND END OF THE POST-CONFLICT PERIOD

- 2.8 For the purposes of this guide, the post-conflict period starts when the main hostilities have ceased to the point that international aid can begin. There is a reasonable degree of security but the situation is not necessarily safe. The transition from intense violence to peaceful recovery typically does not follow a straightforward path. It also does not occur in all parts of the country at the same time. The signing of a peace agreement may signify the end of a conflict but hostility and resentment may continue for months or years at varying levels of intensity. Social tensions may even increase during the post-conflict period. The return of displaced people may provide opportunities to seek revenge and to settle old grievances, and people displaced by the violence may return to find that others have taken their property.
- 2.9 The post-conflict period is considered to end at the point when basic legal frameworks and land administration institutions exist and there is reasonable capacity within the country for the development of policies. However, the end of a post-conflict period may be as difficult to define as its start, and there is seldom a clearly defined boundary. The process of “peace-building” may go on for a much longer period of time.
- 2.10 The nature of activities within the post-conflict period will vary according to the extent to which progress is made. Activities can be characterized as having a focus on emergency relief, and on the development and implementation of policy. This categorization is illustrated in Figure 1, and is described in more detail in the following paragraphs. In practice, these

groups of activities do not occur in a straightforward process. Instead, they are likely to overlap. Emergency activities such as peace enforcement may be required in some areas of a country while some degree of peace may exist in other areas. As a result, activities related to the development of policy may start unevenly across the country. Likewise, institutions may be established in law before there are the resources and capacity to implement the plans. While there may not be a steady move to normality as suggested by Figure 1, the ability for the development and implementation of policy will depend on the extent to which peace can be maintained. The greater the level of peace, the more likely it will be that policies will be developed and implemented.

FIGURE 1



- 2.11 **Emergency activities** focus on establishing basic governance and providing humanitarian services. They are usually undertaken in the immediate aftermath of conflict and before full-scale mobilization of aid resources has started. During this period, there is often little or no operational governance and rule of law, and extensive destruction of infrastructure. Food security is low. There is usually a high possibility of epidemic diseases and exploitation of the population, particularly vulnerable groups including women and children, the elderly, sick and injured, and ethnic minorities. This period may or may not involve international peace-keeping operations such as disarmament and demobilization of former combatants. An uncertain return

to peace or problems surrounding mines and unexploded ordnance may prevent people from returning to their homes and places of work. Land tenure and land administration specialists should play a role in the identification of priorities for land policies. They should also identify short-term actions that can be implemented relatively quickly.

2.12 Activities for the development of policy focus on the planning of necessary administrative and physical infrastructure. They occur when emergency activities are being concluded, and when more concrete plans can be made for the future. Activities may include:

- Identification and recruitment of core expert personnel;
- Identification of specific policy priorities;
- Development of the foundations of government, its institutions and other aspects of its administrative infrastructure;
- Development of interim policy guidelines to deal with urgent priorities, and assignment of responsibilities within government for dealing with them;
- Development of longer-term policies, recruitment of personnel, and establishment of the administrative infrastructure.

Land policies should be carefully designed to ensure that they do not cause new conflicts. They must take into consideration the existing social, political and economic conditions. Land tenure and land administration specialists may assist in the development of a broad policy framework to address land tenure issues. They should advise on a range of narrower policy decisions that affect access to land through restitution and resettlement.

2.13 Activities for the implementation of policy tend to be concentrated later in the post-conflict period when there is a return to a reasonable degree of political and social stability. In this period interim institutions and their policies can be more carefully defined and established in law. Policy strategies are implemented and a reasonable degree of normal government

operations begins. Land administrators should assist in the implementation of policies, e.g. on restitution and resettlement. They should monitor and evaluate the effectiveness of such policies.

- 2.14 During the post-conflict period, people are likely to change the strategies they use to ensure their livelihoods. A livelihood strategy during the conflict and immediately after its end may focus on agricultural production that results in quick yields, and on access to natural resources such as naturally growing food sources, wild game, firewood and water. A livelihood strategy in a later period may focus on access to land and water closer to transportation networks in order to move produce to the markets. A change in livelihood strategy may also involve migration from rural areas to urban centres. Moving from a crisis strategy to one more appropriate for development may take time. It often results in changes in priorities of people for different types of natural resources and other assets.

CHARACTERISTICS OF THE POST-CONFLICT ENVIRONMENT

- 2.15 This section provides an overview of characteristics that may exist in a country emerging from a violent conflict. Characteristics related to land tenure are given in Chapter 3. Civil wars are often lengthy, and many conflicts extend for more than a decade. In Lebanon, the civil war lasted for 17 years. Conflict affected Afghanistan for more than two decades, Guatemala for over three decades and Sudan for four decades. Widespread violence over such periods often results in a humanitarian crisis. See Box 1.
- 2.16 **Death and injury.** By the time peace breaks out in a country that has suffered a lengthy violent conflict, huge numbers of people are likely to have been affected by death and injury. Over three million people are estimated to have been killed in the conflict of the Democratic Republic of the Congo. Those who escape with their lives may suffer injuries from mines or the amputations of limbs. The situation is often characterized by an ongoing fear of violence. Death and injury may be based on ethnic or religious differences. In some conflicts the majority of victims are members of particular groups. In other conflicts atrocities are carried out by all sides.

BOX 1

CONDITIONS FOLLOWING VIOLENT CONFLICTS

Common characteristics of countries emerging from violent conflict include:

- Death and injury of much the population, with a continuing fear of violence.
- High levels of hunger and starvation, especially among women and children and other vulnerable groups.
- Massive displacement of people creates large numbers of refugees and Internally Displaced Persons (IDPs). Much displacement may be caused by forced evictions. Large numbers of displaced people may settle on land without authorization.
- Unresolved political and ethnic tensions exist where people who were forced to flee return to face those who dispossessed them.
- Widespread destruction of infrastructure.
- High levels of environmental degradation.
- A substantial breakdown of government with limited capacity to implement the recovery.
- Discriminatory laws.
- Limited numbers of trained government staff.
- Large-scale destruction of records and information.

- 2.17 **Hunger and starvation.** Severe food shortages typically exist as the conflict disrupts the production and distribution of food supplies. Difficulties in getting access to land, seeds, agricultural implements, livestock and capital in a coordinated way may extend food insecurity, especially in the period when food stocks are low and new crops have not yet been harvested. Chronic hunger weakens people physically and reduces their ability to work.
- 2.18 **Displacement of people.** Violence is likely to result in the displacement of a large percentage of the population, either as refugees or Internally Displaced Persons (IDPs). In many cases, displacement arises from forced evictions. Large numbers of displaced people may have been forced to settle on land to which they have no legal claim. With prolonged conflicts, displacement may be across generations. The following section describes the displacement and return of people in more detail.

- 2.19 **Negative social and psychological consequences.** Many survivors of the conflict may be highly traumatised. Exposure to murder, rape and torture, together with experiences of displacement, separation from friends and family, and loss of employment may result in mental illness and an inability to cope effectively with the task of rebuilding livelihoods after the conflict. Living conditions may create tensions and conflicts, as large numbers of people are forced to live in inadequate space, and as temporary accommodation becomes increasingly permanent. Post-conflict countries often lack the facilities to treat traumatised victims.
- 2.20 Conflicts typically affect men and women differently. Men are more likely to have been recruited, either voluntarily or forcibly, by one of the opposing forces, and may have been killed or captured. Women will have faced increased responsibility for providing for themselves, their children, and the elderly, but with decreased access to resources. Women and their children typically constitute the majority of displaced persons who are destitute. Women may have faced increased risk of rape, with sexual violence and torture sometimes used as a deliberate tactic by the opposing forces. They may have been assaulted as they fled their villages and in camps established for displaced people. Gang rapes and other attacks may have resulted in serious injury and even death, and in sexually transmitted diseases and pregnancy. Victims of rape may have faced rejection and physical abuse from their own communities. Where males were present, the allocation of responsibilities for tasks outside the home may have given a family a difficult choice: to risk the rape of women if they were caught by opposing forces, or the death of men.
- 2.21 Children would also have been affected by the conflict. Young boys may have been abducted and forcibly recruited as soldiers. Boys who evaded abduction may have been mistakenly identified as combatants and attacked by opposing forces. Girls may have faced sexual violence, and even abduction to serve as "temporary wives" for combatants. In countries where girls were responsible for collecting firewood and water and for grazing livestock outside the boundaries of secure settlements, they may have been more exposed to risk than older women.

- 2.22 Changes in values and expectations.** Conflicts may result in significant changes in values and expectation of some people. As these changes are not shared by all, or even a majority of the population, the effect may be to increase tensions between groups of people. In a number of conflicts, women in refugee and settlement camps established women's organizations to improve conditions in the camps. Such change in behaviour of women may have been spontaneous or promoted by international NGOs. Changing the practices of women does not necessarily change the attitudes of men. The empowerment of women during the conflict sometimes resulted in men feeling a loss of power, and particularly in camps where their traditional role of supporting their families was carried out by aid agencies. Women's organizations created during the conflict may expand their roles and work to improve the political and economic power of women. The continuing empowerment of women following the end of the conflict may be resented and resisted by men who wish for a return to the social conditions and power structures that existed before the conflict.
- 2.23** Conflicts may also shift power from one generation to another. In many societies age is respected. However, traditional leaders may not have been equipped to cope with the changed circumstances of refugee and settlement camps. Younger people may have adapted more easily and may have had the language skills to communicate directly with international aid workers. Younger people, with more formal education than the elderly, may have also been recruited by NGOs. The increasing status, both politically and economically, of the young may come at the expense of older male members of the community.
- 2.24** Exposure to conditions in urban areas may reshape behaviours and attitudes. On the one hand, displacement can accelerate the process of urbanization. People moving from rural areas to safer urban settlements may have experienced facilities such as schools, clinics and electricity, and may have been exposed to a greater variety of goods. They may be reluctant to return to rural areas without these facilities. On the other hand, people who return to rural areas may bring with them values and perceptions that prevail in urban centres.

- 2.25 **Destruction of infrastructure and housing.** Conflicts typically result in widespread destruction of houses and other property of civilians. In addition, there is often destruction of infrastructure needed for governance, such as transportation facilities (roads, railways, bridges, airports and harbours), communication facilities (radio and television), and physical facilities (offices, courtrooms and archives).
- 2.26 **Limited government capacity.** During the conflict, the power of the government to operate in parts of the country may have been limited and even blocked. The reduction of government services may have been most severe in areas of fighting or under the control of opposition forces. A lengthy conflict is likely to have resulted in the reduction in capacity to govern in all areas as financial resources were diverted to support conflict-related activities.
- 2.27 Following the end of the conflict, governments at the central and local levels may have little or no capacity to manage the process of reconstruction. Major infrastructure and development projects are complex, and problems arise with their planning and management even under stable conditions. Such problems are magnified by the limited capacity typically found in post-conflict settings. Governments may lack the capacity to provide people returning home with food and services such as health care, education, water and sanitation. Government agencies may lack experienced staff at all levels, with officials having fled or been killed. Equipment and buildings of agencies may have been destroyed. There is often a lack of coordination between government agencies, and between government and aid agencies. For example, an area may be targeted to receive electricity or water, but it may be inaccessible because the road network has not been rehabilitated, or it may not have access to needed social services. In addition, the legitimacy of the government may be questioned by people who opposed it during the conflict. Local and national tensions may flare into violence in settings where many people still have firearms, and where the state is unable to resolve disputes by enforcing the rule of law.
- 2.28 The chaotic conditions may mean that there are significant opportunities for corruption. A lack of accounting procedures may result in widespread

theft of money allocated for redevelopment. People who have easy access to the profits of victory may resist attempts to introduce good governance.

- 2.29 **Limited funding.** Most post-conflict countries were poor and burdened by debt before their plunge into conflict. An inability to service debt during the conflict further increases the debt-load. As a result, governments at the central and local levels tend to be heavily dependent on the international community. The demand for funding typically exceeds the resources available for recovery and reconstruction. Strategies that are developed are sometimes impractical in light of the limited resources available. Initial estimates of costs have been often only a fraction of what was actually required.
- 2.30 **Limited national “ownership” of recovery plans.** The need for international assistance is common for countries emerging from violent conflicts, but the nature and extent of that assistance can vary significantly. In some cases, the pre-conflict government remains in power at the end of the conflict; in other cases, a new national government is formed. In both situations the international community has responded by supporting the government in efforts to rebuild the physical, social, economic, political and administrative infrastructure. In a few cases, the international community has established an authority that has been directly responsible for governance. For Bosnia and Herzegovina, the Dayton Peace Agreement established the Office of the High Representative to oversee the implementation of the civilian aspects of the agreement. The United Nations Security Council established a mission in Kosovo that had broad law-making powers, and created a transitional administration that had extensive legislative and executive authority in Timor-Leste.
- 2.31 International interventions are often necessary because of the limited national capacity. At an extreme level neutral authorities imposed by the international community have been instrumental in the elimination of discriminatory policies, laws and practices that might otherwise have remained in effect. However, the existence of international interventions

does raise tensions as to whether policies are “nationally-owned” or are driven by outsiders.

THE DISPLACEMENT AND RETURN OF REFUGEES AND INTERNALLY DISPLACED PERSONS

- 2.32 Conflicts result in the massive displacement of people, creating large numbers of refugees and Internally Displaced Persons. Some 75 percent of the population were displaced in Timor-Leste, while up to half the population were displaced in the conflicts of Sierra Leone and Bosnia and Herzegovina, many of them fleeing to neighbouring countries. People were often forcibly evicted. Displaced people frequently had little time to prepare and may have left with few possessions. Once displaced, they may have received contradictory advice from governments, armed forces and aid organizations. Displaced people are often forced to settle on land to which they have no legal claim. Such displacement may be across generations when conflicts last for decades.
- 2.33 Entire communities may have been forced to relocate to “protected villages” under military control. The forced movement of civilians by governments is provided for under the Geneva Convention in order to give protection against attacks by rebels, but a number of conditions are required, including the provision of food, water and shelter. While the need to protect the population may be used as justification, such relocations have often been carried out as part of a deliberate effort to control areas by depopulating them. At times rebel forces have banned settlements in certain areas in order to remove people from the control of government. Government forces in turn may have taken action against villages suspected of containing rebel troops or sympathizers. Activities of both sides may cause the death of villagers, the destruction of homes and food stocks, and displacement of the survivors.
- 2.34 There is an important legal distinction between refugees and Internally Displaced Persons (IDPs). Refugees are people who flee their homes for the safety of another country. The legal obligations of countries are defined

in the Convention relating to the Status of Refugees (1951) and its Protocol (1967). IDPs are people who flee from violence but remain within their own country. As such, they are subject to the laws of that country, and may lack the protection of international law. Refugees are often taken care of through well-defined organizational structures while IDPs tend to be beyond the reach of international organizations.

- 2.35 The return of refugees is usually based on specific arrangements negotiated at the end of the conflict. The Convention relating to the Status of Refugees contains cessation clauses defining when a person would be no longer eligible for refugee status. International law does not define when an IDP rejoins society and decisions may be made on an arbitrary basis. The use of different criteria by various parties may result in a controversy over the number of IDPs, and even whether there is an “IDP problem” in a country.
- 2.36 An IDP may become a refugee by crossing an international boundary. Conversely, the termination of refugee status following a peace settlement may result in an increase in the number of IDPs if returning refugees are unable to return to their homes. The numbers of refugees, IDPs and former combatants who return at the end of the conflict may be very large, but it may difficult or impossible to know when they return. Many IDPs may have remained anonymous during the conflict due to a fear of persecution, and the spontaneous return of refugees may not show in official statistics.
- 2.37 Safety is often one of the greatest concerns in areas of continuing tension. Some refugees and IDPs may be reluctant to return to the area from where they were forcibly evicted because of a belief that the situation is not yet stable. In some cases, areas in a country may be classified as safe while conditions are still insecure.
- 2.38 For many who return, a major concern is the limited ability to enjoy a sustainable livelihood. Employment opportunities are typically scarce, especially in rural areas. Land may not be available for agricultural purposes because of mines, or it may have to be cleared of vegetation that grew while

it was abandoned. People may find that they do not have access to food and water, and to services such as education and health care which they experienced in urban areas or in settlement camps. The inability to farm or find other work may cause some people to migrate to urban centres.

- 2.39 Differences between refugees and IDPs may emerge upon their return. Some programmes have given the return of refugees a higher status even though both refugees and IDPs may have been forced to flee for the same reasons. IDPs may resent the fact that refugees received assistance while they were in another country, and at times they may have even been able to work. IDPs may also resent refugees returning with new and valuable possessions acquired while they were outside the country. Programmes may also distinguish between different categories of refugees, and people who left with one wave of refugees may be treated differently from those who left in a later wave.

3. Land tenure in post-conflict settings

- 3.1 Violent conflicts usually result in significant changes to land tenure and its administration. Many people may have been displaced during the conflict. Host communities in safer areas may have faced increasing competition for access to land, forests and water with the arrival of large numbers of displaced people. Land administration systems may have suffered the loss of personnel, land records and facilities. The end of conflict provides an opportunity for a return to homes and stability. At the same time, it may result in changes to power relationships in a society and may lead to a scramble for land.
- 3.2 This chapter is oriented towards two audiences. It presents designers of emergency projects with an overview of land tenure and its administration. It provides land tenure and land administration specialists, as well as project designers, with a description of conditions that commonly exist in countries emerging from violent conflicts. Possible responses to address these conditions are given in chapters 4, 5 and 6. The chapter concludes by showing the importance of considering land tenure in emergency projects.

LAND TENURE AND ITS ADMINISTRATION

- 3.3 **Land tenure** is the relationship among people, as individuals and groups, with respect to land and other natural resources. This relationship may be defined by written law or by custom. Land tenure is an institution, i.e. rules invented by societies to regulate behaviour. The rules of tenure define how rights to land are to be assigned within societies. They define how access is granted to rights to use, control and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources of the land for how long, and under what conditions.
- 3.4 Rights to land, and housing upon it, are treated as elements of human rights in international law through conventions such as the International Covenant

on Economic, Social and Cultural Rights (1976); the International Covenant on Civil and Political Rights (1976), the International Convention on the Elimination of all Forms of Racial Discrimination (1969); the Convention on the Elimination of all Forms of Discrimination Against Women (1981); and the Convention relating to the Status of Refugees (1951).

3.5 Land tenure is often categorised as:

1. Private: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.
2. Communal: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
3. Open access: specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands and forests where there is free access to the resources for all. (An important difference between open access and communal systems is that under a communal system non-members of the community are excluded from using the common areas.)
4. State: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralized level of government.

Most forms may be found within a given society, for example, common grazing rights, private residential and agricultural holdings, and state ownership of forests.

3.6 In practice, there may be multiple rights to the same parcel of land, e.g. the right to sell the land, the right to use the land through a lease, or the right

to travel across the land. These rights can be held by several different persons or groups. This has given rise to the concept of “a bundle of rights” which is an analogy that the collection of rights to a land parcel can be pictured as a bundle of sticks. Individual “sticks” in the bundle of rights may be held by different people, they may be acquired in different ways, and they may be held for different periods. For example, the bundle of rights may be shared between the owner and a tenant to create a leasing arrangement that gives the tenant the right to use the land on specified terms and conditions. If the farm is mortgaged, the creditor may hold a right from the bundle to recover the unpaid loan through a sale of the mortgaged property in the case of default. A neighbouring farmer may have the right from the bundle to drive cattle across the land to obtain water at the river.

3.7 At times it may be useful to simplify the representation of rights to land by identifying:

- use rights: rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.
- control rights: rights to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of crops, etc.
- transfer rights: right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.

Very often, the poor in a community have only use rights. A woman, for example, may have the right to use some land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market. While such simplifications can be useful, the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

3.8 In broad terms, land tenure rights are often classified according to whether they are “formal” or “informal”. There can be perceptual problems with this approach because some so-called informal rights may, in practice, be

quite formal and secure in their own context. Despite these perceptual problems, the classification of formal and informal tenure can sometimes provide the basis for useful analysis.

- 3.9 Formal rights may be regarded as those that are explicitly acknowledged by the state and which may be protected using legal means. Informal rights are those that lack official recognition and protection. In some cases, informal rights are illegal, i.e. held in direct violation of the law. An extreme case is when squatters occupy a site in contravention of an eviction notice. In many countries, illegal property holdings arise because of inappropriate laws. For example, the minimum size of a farm may be defined by law whereas in practice farms may be much smaller as a result of informal subdivisions among heirs. In other cases, informal rights may be “extra-legal”, i.e. not against the law, but not recognised by the law. In some countries, customary property held in rural indigenous communities falls into this category. A distinction often made is between statutory rights or “formally recognised rights” on the one hand, and customary rights or “traditional rights” on the other hand. This distinction is now becoming blurred in a number of countries, particularly in Africa, which provide formal legal recognition to customary rights. Formal and informal rights may co-exist. For example, in a country that forbids leasing, a person who holds legally recognized ownership rights to a parcel may illegally lease the land to someone who is landless.
- 3.10 These various forms of tenure can create a complex pattern of rights and other interests. A particularly complex situation arises when statutory rights are granted in a way that does not take into account existing customary rights, e.g. for agriculture and grazing. This clash of *de jure* rights (existing because of the formal law) and *de facto* rights (existing in reality) often occurs in environmentally-stressed areas.
- 3.11 **Security of tenure** is the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Security of tenure

cannot be measured directly and, to a large extent, it is what people perceive it to be. The attributes of security of tenure may change from one context to another. For example, a person may have a right to use a parcel of land for a six month growing season, and if that person is safe from eviction during the season, the tenure is secure. However, a person with use rights for six months will not plant trees, invest in irrigation works or take measures to prevent soil erosion as the time is too short for that person to benefit from the investment. The tenure is insecure for long-term investments even if it is secure for short-term ones.

- 3.12 Equating security with rights to sell and mortgage is true for some parts of the world but it is not true in many others. People in parts of the world where there are strong customary tenure regimes may enjoy tenure security without having the right to transfer, or having strictly limited rights, e.g. transfers may be limited to heirs through inheritance, or sales may be restricted to members of the community.
- 3.13 The sources of tenure security may vary from one context to another. Security may be provided through recognition and protection of a person's rights by:
- The local community and its groups such as local farmers' organizations and water users' associations;
 - The government in the form of political recognition of some rights, e.g. the acceptance of an illegal encroachment or settlement;
 - The state's administrative structures and formal legal system.
- In some countries, security can also be provided by coercive structures such as warlords that emerge in the absence of an effective state during periods of civil unrest.
- 3.14 **Land administration** is the way in which the rules of land tenure are applied and made operational. Land administration comprises an extensive range of systems and processes to administer:
- land rights: the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party

to another through sale, lease, loan, gift or inheritance; and the adjudication of doubts and disputes regarding rights and parcel boundaries;

- land use regulation: land use planning and enforcement, and the adjudication of land use conflicts;
- land valuation and taxation: the determination of values of land and buildings; the gathering of tax revenues on land and buildings, and the adjudication of disputes over land valuation and taxation.

Land administration includes an element of enforcement to ensure that people comply with the rules of land tenure.

- 3.15 In most countries subject to violent conflict, formal systems of land administration operated by government are often used only for land of high economic value, and so they may cover a small portion of a country. These formal land administration systems often have a low capacity to operate effectively even in the absence of a violent conflict. Informal or customary systems of land administration usually operate in the greater portion of such countries.

ACCESS TO LAND IN POST-CONFLICT SETTINGS

- 3.16 In the conflict, people may have lost their land in many ways:
- The ruling authorities may have arbitrarily enforced evictions to remove people from their land. Land may have been expropriated without the payment of fair compensation to the original owners. The expropriated land may have been allocated to influential political and military figures at little cost.
 - Powerful landowners, perhaps employing armed gangs, may have forced people off their land. They may have also forced people with formal land rights to sign transfer documents as if they were voluntarily transferring their property.
 - People may have abandoned their land because of fear of violence and fled to safer areas. The ruling authority may have legitimized occupation of “abandoned” property, usually by a member of a more powerful group.

- People in safer areas of the country may have lost access to land with the arrival of those who were displaced. IDPs and host communities are often able to reach agreements where the prevailing tenure system is adapted to accommodate the new arrivals. However, the requirements of IDPs arriving on a large-scale may exceed the capacity of a host community to accommodate them. IDPs and host communities may also pursue different approaches to the use of land. New conflicts may arise if these different approaches are incompatible.
- 3.17 Following the conflict, some people who were displaced from rural areas may seek land to settle in urban areas. Other refugees and IDPs return to their homes, either spontaneously or through an organized process. The return of refugees is provided through the Convention relating to the Status of Refugees. There is no equivalent international law for IDPs but their rights of return are addressed by UNHCR in its “Guiding Principles on Internal Displacement” which provide a non-binding framework for return and re-integration. These principles state that IDPs should be able to return to their homes or be able to resettle in another part of the country. The right of refugees and IDPs to return to their homes and places of habitual residence has been reaffirmed in resolutions of the UN Sub-Commission on Human Rights (2002/30) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1998/26). Peace agreements, such as the Dayton Peace Agreement for Bosnia and Herzegovina, may also address the restitution of property.
- 3.18 When refugees and IDPs return to their home areas, they often find that their land is occupied by others. In some cases, the occupants are people who used force to seize the land, or who benefited from discriminatory laws to acquire it as abandoned property. In other cases, the occupants are also victims of the conflict who fled from other areas. It is thus common that people cannot recover their property without displacing the existing occupants. At times the occupants may retain ownership of their own property while occupying the property of others, a situation known as “double occupancy”. Attempts to recover property may be violently resisted.

People who are unable to return to their original lands will seek to be resettled elsewhere.

- 3.19 Men and women may have different opportunities to gain access to land. Violent conflicts may result in increased numbers of female-headed households but land allocations after the conflict may continue to favour men. Access to land by widows may be particularly difficult in some customary tenure systems.
- 3.20 Programmes to allocate land to beneficiaries may be abused. For example, people eligible for land allocations, such as displaced people and ex-combatants, may sell their land in the informal land market and then move elsewhere to submit another application for land.
- 3.21 Large-scale commercial operations may seek land in the post-conflict period. Following some conflicts, millions of hectares of forest and agricultural lands were granted to private companies and individuals for long-term investment and exploitation. Land speculation and land grabbing by elites may be common. This has the potential of placing the weak against people with connections, and leaving them feeling that they have been left out from the benefits of peace.
- 3.22 Recovery of some lands may be impossible because of mines and unexploded ordnance. Lands typically affected are those that were frontlines during the conflict. As frontlines may move back and forth across the countryside during the years of a conflict, mine-laying may have taken place over a large area. Such areas may have had massive migration as people fled the fighting. As a result, large numbers of people may be returning to areas with a high concentration of explosives. The location of mines is not commonly documented during the mine-laying operations. Removing land mines is a slow process and the return of people is usually not matched by the clearance of mines. As a result, mines continue to kill and maim people who are returning, and delay agricultural programmes to provide for food security.

LAND ADMINISTRATION IN POST-CONFLICT SETTINGS

- 3.23 **Land records.** In many conflicts land records are deliberately targeted for destruction by one or more of the opposing forces. Land records often contain information that serves the purposes of some people but not others. A group forced to withdraw from an area may remove land records that favour it, and may destroy records that benefit the opposition. In Timor-Leste, it has been estimated that 80 percent of records were destroyed. Personal copies of land records were often abandoned in the rush to evacuate, and were also destroyed. Without land records, proving rights is difficult.
- 3.24 Land records can survive. At times, staff of land agencies have rescued land records and hidden them to prevent their destruction. However, surviving land records cannot always be accepted without scrutiny. In some cases, land records may not show the current ownership:
- Land records may show a deceased person to be the owner because the heirs may not have taken the steps necessary to become recognized as the legal owner.
 - Land records may show the owner to be someone who voluntarily transferred the property to someone else. During the conflict, the land registration system may not have operated and many transactions may be informal. People acquiring land may have some documentation of the transfer but it may not meet the standards necessary for the transaction to be considered legal. When conflicts have lasted for many years, the number of informal transactions may be large.
 - The true identity of a purchaser may not be shown on the land records to avoid discriminatory laws in place at the time of the transfer. Instead, the name of an intermediary may have been used. After the conflict, this may give the impression that the intermediaries are the owners of the properties as their names appear on the legal documents.
- 3.25 In other cases, land records may show the legal owner of record to be someone who acquired the land by force or fraud:
- Land records will not show that transfer has taken place through

coercion. People have been threatened with violence if they did not state that they entered into a voluntary transaction to sell their property.

- Land records may be falsified. Counterfeit documents have been produced to convince officials that occupants have legal rights to the property.

- 3.26 In yet other cases, people returning to claim their land may find that it is being occupied by people who legitimately acquired ownership during the conflict. For example, beneficiaries of land acquired by the government through illegal expropriation may have sold it to bona fide purchasers, who are shown as the legal owners.
- 3.27 **Legal framework.** Legislation may be flawed in several regards. Some laws may discriminate against ethnic groups, e.g. placing restrictions on property rights. Laws may be selectively applied against particular groups. Other laws may not provide adequate safeguards for women, e.g. not allowing them to inherit.
- 3.28 Existing legislation may not provide for some of the complex realities of a post-conflict setting, e.g. the restitution of land and resettlement on a large scale. There may not be legal and procedural safeguards to ensure restitution or payment of compensation. The steps needed for an owner to regain property may not be defined. Numerous grey areas may exist in determining whether a person is a lawful owner or not.
- 3.29 New legislation may be passed rapidly and without careful consideration of the implications. Laws to provide access to land may conflict with other legislation. Legislation concerning land tenure may change many times throughout the process. When legislation is changing rapidly, judges and other officials may not know which versions of laws and regulations are to be enforced.
- 3.30 **Courts.** Impartial procedures for resolving disputes are often not available in post-conflict situations. The court systems may not exist, or they may be

so overburdened or ineffective that they do not provide a remedy. Corruption may be widespread. Alternative dispute resolution mechanisms may not exist. The rules for making judgements may not be clear. Judges and other court officials may be unfamiliar with procedures to provide access to land where they exist, and they may lack knowledge of concepts such as international law or human rights.

- 3.31 **Enforcement.** Property disputes may continue because court orders and other eviction notices are not implemented. A court order may not be enough for someone to recover property. Politicians and officials who wish to prevent minorities from returning may refuse to carry out orders to evict their supporters.
- 3.32 **Communication.** Programmes to inform the public may be weak or non-existent. Many IDPs may live in dispersed groups and may not know about programmes and procedures for restitution. Rumours are likely to be common and may fuel fears.
- 3.33 **Operations.** The capacity to carry out land administration functions is usually limited. Trained technical staff and managers may have migrated or been killed. In Rwanda, three-quarters of public service personnel were lost, and eighty percent of trained legal personnel were killed or in exile. Vehicles, equipment and facilities may have been destroyed. Responsibility for operations may be divided between different government agencies, and between central and local levels of government. Coordination may be difficult and communication between agencies may be limited or non-existent. As a result, problems arise such as the same parcel of land being allocated by different agencies to different people.
- 3.34 Refugees and IDPs may return on such a massive scale that the land administration system is not able to cope. Much resettlement thus takes place informally. Attempts to speed up the process by introducing computer systems can be unproductive if they are poorly designed and implemented, and lengthy delays may arise as a result of limited human and technical capacity.

- 3.35 **Corruption.** Lack of accountability may result in the theft of funds. Commissions to allocate land to refugees and IDPs may transfer land to themselves or family members. Land administrators may be under pressure from elite groups to favour them. Petty corruption may be widespread, with claimants being required to pay bribes.
- 3.36 **Funding.** The demand for funding typically exceeds the resources available for programmes to provide access to land and improve land administration. Strategies that are developed are sometimes impractical in light of the limited resources available.
- 3.37 **Dependency on others.** Because of the weakness of the post-conflict governments, the international community may have a greater influence than would otherwise be the case. Coordination between the government and donors may be difficult. They may have different interpretations of norms of human rights, e.g. with regard to the protection of rights of women and minorities to land. There may be different priorities with regard to restitution, compensation, resettlement, and the reconstruction of a land administration system. Differences of opinion may exist as to whether customary tenure should be replaced by statutory tenure, and whether common property resources should be privatized.

CUSTOMARY LANDS

- 3.38 The existence of customary tenure in a country will introduce a set of additional issues. Women, and widows in particular, may have difficulties acquiring access to land. In many customary societies, women gain access to land through their husbands or male relatives. Women who are displaced because of the conflict may have difficulty returning to their homes if their husbands or brothers were killed.
- 3.39 Access to land by pastoralists may be important. Control over arid lands and pastures may be unclear. In some countries, the state has claimed nominal ownership to land used by pastoralists but has not exercised control over the land. Pastoral lands may not be clearly defined on the ground,

further adding to the confusion. In arid areas, the variability of rainfall results in mobility being important to the livelihoods of nomadic pastoralists as well as others. Mobility occurs within the home territory of a pastoral group. It may also occur at a regional level, with pastoralists migrating along routes on a seasonal basis. Access rights to land and water are often traditionally negotiated between different stakeholders, e.g. for establishing the conditions of rights of way through different home territories. Access is typically based on social organization, and people may become involved in a conflict because of their membership in an organization. Conflicts over land, and their resolution, are thus usually not expressed on an individual basis but are arranged around social groups.

- 3.40 Customary rights are often not documented, and the destruction of land records may not be critical for areas governed by customary law. Where the customary structure is still in place, customary leaders should continue to provide the institutional memory of who holds what rights, and should allocate land and adjudicate disputes.
- 3.41 There may be a gap of knowledge if customary leaders have been killed or displaced. A further problem is that a lengthy conflict may weaken customary institutions and erode the credibility of the leaders. This may occur in cases where a leader lacks respect from members of the community, e.g. because the leader assumed power through interference by one of the opposing forces, or manipulated the conflict to acquire the position.
- 3.42 Customary law frequently exists alongside statutory law in a situation referred to as “legal pluralism”. Local decisions governing land may be based on a combination of statutory and customary law, with wide variations in interpretations from one area to another. The pluralism of authority over law can allow people to choose the legal framework that provides them with the best claim to property, a process known as “forum shopping”. Legal pluralism can be beneficial by allowing people to adapt to social, political and environmental changes, and by allowing the existence of diverse systems of land tenure that have evolved to meet local conditions. It can also be

harmful as it may increase uncertainty and confusion when people pursue different ways to legitimize claims to the same parcel of land.

- 3.43 Where customary tenure and statutory tenure co-exist, they may change at different rates. A “land rush” often follows a peace settlement. For example, some groups may consider the chaotic post-conflict setting as an opportunity to re-assert historical claims to lands which they lost in the past. People may acquire land in informal ways if formal approaches do not exist, or cannot be easily used. Customary or informal tenure may evolve quickly compared to the re-establishment of the land administration system. In the absence of formal government structures, communities may modify customary or informal systems to address conditions that did not exist before the conflict, and for which there are no traditional rules. In some cases, elements of customary law, e.g. access to land by women, may clash with new non-discriminatory policies adopted after the conflict.

THE IMPORTANCE OF CONSIDERING LAND TENURE IN POST-CONFLICT SETTINGS

- 3.44 Providing secure access to land is an important part of dealing with emergency humanitarian needs as well as longer-term social and economic stability. Secure access to land helps victims of conflicts to have a place to live, to grow food, and to earn income. Security of tenure, without fear of eviction, allows people to rebuild economic and social relationships. More broadly, it allows local regions and the country to establish their economies. It supports reconciliation and prospects for long-term peace. See Box 2.
- 3.45 Regardless of the cause of a conflict, violence over a wide area and a long period of time will result in many land tenure problems. People who have been displaced will need to have their property restituted or will need to be resettled elsewhere. Without addressing these problems in the short-term, the peace process is likely to be restricted. Some land tenure issues, while important, may need to be deferred until there is sufficient capacity in the country to address them. For example, programmes such as large-scale land reforms are highly complex and are likely to be beyond the capacity of a

BOX 2

THE NEED TO RESOLVE ISSUES OF LAND ACCESS

Sustainable peace following violent conflict may be jeopardized by a failure to resolve land tenure issues. A peace agreement in a still uncertain setting can be threatened by land disputes arising from the return of refugees and IDPs. Providing access to land in post-conflict settings can be complicated, with many legitimate yet competing claims for land. In addition, there is a need to address access to land by vulnerable people including women and children, the elderly, and ethnic and political minorities.

Resolving issues of access to land can provide many benefits:

- As an emergency measure, access to land can provide food, shelter and access to humanitarian aid. For those who have been forced from their homes or who have nowhere to live, this is a critical step for survival.
- Access to public land (whether temporary or not) can provide stability where houses have been destroyed.
- Access to land deriving from a legitimate source (such as a judicial court or independent administrative body) can reduce land disputes that can be politically, socially and economically destabilizing.
- The ability to enforce rights of access provides a level of security of tenure and reduces fears of arbitrary eviction.
- Access to land can provide the foundation for the return to economic and social stability. It provides a base where people can live, grow food and work. It enables reconstruction to take place and for industry and agriculture to be re-established. It can be the basis of foreign and domestic investment.
- In the case of customary lands, access can provide a sense of identity, and a cultural connection with the land.

country emerging from a violent conflict. They should be introduced, however, as soon as there is a capacity to implement them.

- 3.46 Too often land tenure issues are not considered at the time of recovery and reconstruction. Land tenure issues may be ignored because those planning

the recovery of a country do not realise the importance of addressing them. They may be ignored because they are considered to be too complex and difficult to address. They may also be ignored because of lack of political will; those who were actively involved in the conflict may have used the opportunity to acquire property of others. Whatever the reason, ignoring land tenure problems will not make them vanish, and may result in renewed conflict. For example, in some post-conflict situations aid workers tried to help displaced people by settling them on land that had been incorrectly identified as vacant. In doing so, local communities were inadvertently dispossessed of their rights to that land. The people displaced by the original conflict were put in the midst of a new conflict as the communities tried to recover their land.

4. Assistance in assessment missions

- 4.1 At the early moments in a transition to peace, assessment missions are usually carried out to analyse issues and to identify priorities for further action. These interventions occur when the main hostilities have ceased to the point that international aid can start with a reasonable degree of security. However, at these early moments, the security situation may change rapidly. Those involved with preliminary assessments must be trained in security matters.
- 4.2 Such missions should include a land tenure and land administration specialist to investigate key issues of access to land and land administration. The initial assessment of land tenure issues is likely to be incomplete (see Box 3). However, despite these limitations, it usually provides the first identification of the nature, scope, severity and distribution of land tenure problems in the country. The assessment should prioritise actions to be carried in support of emergency activities. In addition, it should serve to build the foundation for more detailed work to be carried out by specialists with longer-term assignments.
- 4.3 This chapter identifies issues which may be considered for the terms of reference for specialists during the assessment missions. These issues are described in more detail in Chapter 5.
- 4.4 **Types of land tenure.** The primary types of tenure should be identified. These often include different forms of statutory tenure and customary tenure. The analysis should address all relevant rights to land, including ownership and other more limited or temporary rights for particular purposes (e.g. use rights and mortgage rights). Rights for different types of rural land use should be included (e.g. sedentary agriculture and pastoralism). The linkages between rural and urban activities should be considered.
- 4.5 The analysis should address how the post-conflict situation changed the way in which access to land is acquired. At times, reports of early missions

BOX 3

LIMITATIONS OF THE INITIAL ASSESSMENTS

The initial assessment of land tenure issues is likely to be incomplete. Information for planning the recovery and reconstruction is typically not available in countries that have suffered long conflicts. Many years may have passed since a census was carried out, and during the conflict much of the population may have moved. The dynamic situation of the post-conflict period will hamper efforts to collect data. Large numbers of IDPs and refugees may be moving every day outside of any organized process, and their locations may not be noted for some time.

Knowledge of the situation in some areas may be limited if travel is restricted because of ongoing local conflicts, and the destruction of infrastructure such as roads, bridges and airports.

People who can be interviewed may be reluctant to speak to strangers or may be suspicious of the government and its partners.

The inaccessibility of people, or the unwillingness to participate in surveys, may produce biases in the assessments. This will be especially the case when the needs of the population are diverse.

have focused on how land tenure might have worked in the absence of a conflict, and they ignored the disruptions caused by the conflict.

4.6 Access to land. The relationship between access to land and the livelihood strategies of people should be analysed. The analysis of the need for land by returning refugees and IDPs should consider seasonal access to land. The availability of food, and the need for it, will vary from one season to another. Issues may include:

- Restitution;
- Land disputes;
- Compensation;
- Eviction;

- Resettlement;
- Land for vulnerable groups;
- Emergency shelter and housing;
- Public and private abandoned land;
- Lands that are free of mines and lands that are mined.

4.7 Operational issues. The analysis should address:

- Land administration agencies and their mandates;
- Staffing levels of agencies;
- Location and condition of office premises;
- Availability and condition of equipment;
- Availability and condition of land records.

4.8 Policy framework. Policies related to land tenure should be identified, along with gaps and contradictions.

4.9 Legal framework. Legislation related to land tenure should be identified, and its strengths and weaknesses should be assessed. Legislation should be identified for translation so that it can be read by international specialists.

4.10 Inter-agency co-ordination. There should be an assessment of the co-ordination of land tenure activities of government agencies, the United Nations, international aid organizations and NGOs.

4.11 Communication. The ability to communicate with people should be assessed. Issues include those of language (e.g. the need to use translators), literacy levels, and the availability of media such as radio and television.

4.12 Sources of information should be reviewed.

- People and organizations should be identified.
- The availability and usefulness of remotely-sensed imagery should be assessed for its use in identifying mined areas and areas of potential agricultural redevelopment. Older imagery may be able to provide information on when particular areas were occupied.

5. Assistance with emergency activities

- 5.1 The early assessment missions provide an important analysis of the situation but they can give only a limited understanding of issues as they are carried out as short-term assignments. The first practical steps to assist the government often begin with the arrival of project staff with longer-term assignments. The focus during this early time is on activities that are of an emergency nature.
- 5.2 Experienced land tenure and land administration specialists should be part of the project staff. This chapter identifies key questions that they should address during the emergency stage. This work should form the basis for the identification of priorities for the development of land policies. In addition, they should identify short-term actions that can be implemented relatively quickly. Constraints with the collection of information, described in chapter 4, are likely to continue to exist, and they will affect the quality of the analysis.
- 5.3 The team of specialists should comprise a mix of national and international personnel. National specialists may be hard to identify as they are likely to be just as much victims of the conflict as others, but efforts should be made to find them. National specialists should bring knowledge of local procedures and languages, and the locations of land records and other essential documents. They should be well-regarded by different sectors of society. International specialists should contribute knowledge of international best practices in post-conflict settings, and should provide some independence from local controversies.
- 5.4 The mix of skills and expertise of land tenure and land administration specialists should be appropriate for the nature and conditions of the post-conflict setting. Expertise may be required in areas such as:
 - Land policy;
 - Land legislation;

- Land tenure relevant to the conditions of the country (e.g. pastoralism if dryland areas are affected);
- Land registration and cadastre;
- Adjudication and dispute resolution;
- Geographic information systems (GIS) and remote sensing;
- Communication and dissemination programmes.

- 5.5 Potential stakeholders should be identified at an early stage. See Box 4. The list may be long and it may be difficult to involve all stakeholders in initial discussions. Vulnerable people such as the poor, the illiterate and those living in remote areas may have difficulty in organizing themselves, and it may not be easy to include them. Despite these difficulties, special efforts should be made to reach the poor as they are amongst the most vulnerable and their livelihoods are likely to be greatly affected by new land policies. An analysis of the interests of stakeholders should be carried out.

RECOGNITION OF LAND TENURE PROBLEMS

- 5.6 **Is access to land on the agenda?** The importance assigned to land tenure issues by those leading the recovery and reconstruction efforts should be assessed. People who set priorities for recovery and reconstruction may not view land tenure problems with the same importance that is assigned by people who experience these problems on a daily basis. Establishing institutions with the legal authority and capacity to adjudicate land rights and land disputes may not be considered important, or may be thought to be too difficult. Sometimes it has only been extreme cases of abuses of human rights that have forced the inclusion of land tenure issues on the agenda.
- 5.7 Land tenure issues may appear fragmented, e.g. the temporary allocation of land, the need for agricultural land to ensure food security, the need for adequate shelter, or the facilitation of access to land through a lawful claims process. These different aspects of land tenure may have differing and varying political importance during the post-conflict period. An approaching winter may highlight the need to provide emergency shelter but the importance may decline with the arrival of warmer weather.

BOX 4**IDENTIFICATION OF POTENTIAL STAKEHOLDERS**

People who have an interest in land issues may include:

- People who are trying to get their land restituted, e.g. where land was unfairly expropriated by government, was acquired by force or fraud, or was occupied by others when the legitimate owners fled during the conflict.
- People trying to get formal rights to land they occupy, e.g. squatters, people who acquired land from a former government administration but who did not receive legal documentation.
- People who occupy land without authorization.
- People who are trying to get some land, e.g. those who cannot return to their homes, ex-combatants and other landless poor including women-headed households.
- Policy-makers.
- Legislators.
- People in land administration agencies who are responsible for implementing the policies and laws related to land tenure.
- People in other government agencies, e.g. finance, social welfare, transportation, communications, rural development.
- Local leaders.
- People in NGOs with an interest in land tenure, some of whom may focus on single issues such as gender or the environment.
- People in relevant departments of universities.
- People in bilateral and multilateral agencies supporting the recovery and reconstruction.

- 5.8 Even if a government recognises that access to land is a source of social tension, it may not lay out a comprehensive framework for addressing the challenges. Different ministries may put forward competing claims for responsibility for land and other forms of property. Responsibilities for land administration may be allocated within a policy and legal vacuum. As a result, access to land may be achieved through a method that can be described as “self help”: people doing what is necessary to survive, including occupying whatever land or buildings that are available.

THE LAND TENURE SYSTEM

- 5.9 **What land tenure systems exist?** The analysis carried out during the preliminary assessment mission should be extended. The analysis should provide the basis for the re-establishment or reform of institutions. Formal legal land tenure systems may include private sector, co-operatives and state holdings. The nature of the registration system should be assessed, e.g. whether registration documents provide conclusive proof or only prima facie evidence of land rights. The legal status of surveys and maps of land parcels should also be assessed, e.g. whether they are part of the legal record. Formal systems may differ in rural and urban areas, and rural-urban linkages should be assessed.
- 5.10 Formal land tenure systems may co-exist with customary tenure systems. In such cases, customary tenure may be more relevant in rural areas, and especially in more remote locations. Customary institutions may survive the conflict, possibly in altered forms. The regional variability of customs, and how they might have changed, may mean that land administrators do not have a good understanding of their specific rules. The situation may be complex. There may be several different types of customary tenure systems existing in different parts of the country, and such systems may have been affected by legislation and conflict.
- 5.11 **How has the post-conflict situation changed the way in which access to land is acquired?** The conflict may mean that traditional ways to acquire land are no longer possible, and may have introduced a multitude of competing claims to land. For example, in the early days following the end of the conflict:
- People who were forced to relocate may not be able to acquire land in their home areas. They may also not have a right to acquire land in the area where they are currently located.
 - Discriminatory legislation introduced during the conflict may result in some people having their land expropriated. Legislation may also prevent some groups from legally acquiring land.
 - A breakdown in the land registration system may mean that it is impossible to determine who has legal rights to occupy private land.

Large numbers of voluntary transactions may not have been registered or otherwise recorded.

- A breakdown in the court or justice system may mean that it is impossible to legally resolve land disputes.

5.12 Which groups are vulnerable? Vulnerable groups should be identified as soon as possible. Examples include:

- Women may be disadvantaged from holding property rights under statutory law as well as customary law.
- Children separated from their family as a result of the conflict may be extremely vulnerable and may lose inheritance rights.
- Ethnic or religious minorities may be discriminated against.
- The poorest, who are usually the least educated, may face difficulties in understanding the processes for restitution and may lack the political connections needed for action to occur. This category may include the disabled, IDPs, and ex-combatants of low rank from the various armed forces.

ADJUDICATION OF LAND RIGHTS

- 5.13 What is the need for restitution? What is the extent of unauthorized occupation of land?** Refugees and IDPs returning home may find that their property has been occupied by others. Unauthorized occupation may also occur on public lands. Restitution requires the adjudication of competing claims to determine who has a more legitimate claim to the land. In some cases, land claims may be relatively simple: people whose land was taken by force or fraud try to recover it from those who seized it. Other cases may be more complicated and involve several competing legitimate claims. For example, land may have been unfairly expropriated by the government during the conflict and transferred to a beneficiary who may then have legally sold the land to the current owner. In such a case, a person who owned the land before it was expropriated will try to recover it from someone who bought it in a bona fide transaction.

- 5.14 The nature and extent of land disputes should be analysed. See Box 5. The analysis should assess factors such as:
- How many applications for restitution might be made in different regions of the country?
 - What different types of restitution cases might exist?
 - What types of people may apply for their land to be restituted?
 - What evidence are people likely to have to support their claims?
 - If people recover their property from occupants, how can those occupants be protected from becoming homeless?
 - Is restitution an option in all cases? If not, what other alternatives are available, e.g. compensation in money or in kind.
- 5.15 **What problems may exist with evictions?** On the one hand, the lack of alternative accommodation may make it difficult for refugees and IDPs to evict people from their land. On the other hand, evictions may be carried out by one group against another, and women may be evicted by their families from family property. Governments may also evict people in

BOX 5

EXAMPLES OF LAND DISPUTES

The nature of land disputes will depend on the circumstances. There may be many potential combinations of disputes. Examples of categories of land disputes may include:

- Claims by government of people occupying public land.
- Claims by returning refugees and IDPs of people occupying their land without authorization.
- Claims by owners that returning refugees and IDPs are occupying their land without authorization.
- Claims by refugees that IDPs are occupying their land without authorization.
- Claims that land is being occupied by people who were moved there by a former government, i.e. under orders as opposed to a voluntary occupation.
- Conflicting legitimate claims created by successive long-term occupations by different parties.
- Claims by two or more communities for the same land.

keeping with legal obligations under international agreements. Delays and difficulties with disarmament programmes for firearms may result in volatile and dangerous situations if people resist attempts to evict them.

- 5.16 **What legal mechanisms exist for resolving disputes over land?** What is the ability of courts to hear cases in a timely manner? Is there a precedence for the use of “Alternative Dispute Resolution” approaches such as mediation and arbitration? Can informal alternative dispute resolution approaches be introduced in a way that does not undermine the formal legal system or a customary system?
- 5.17 **What is the need to formalize rights?** Some people may want to get formal rights to land that they currently occupy. For example, the government during the conflict may have transferred land to beneficiaries of a land reform but without issuing titles. In other cases, squatters may have settled without objection on land. People with little tenure security may wish to have their rights confirmed before they are dispossessed by others.

NEED FOR LAND

- 5.18 **What land is needed for resettlement of landless people?** Resettlement is necessary when people are unable to return to their original lands and must be accommodated elsewhere. Access to land by women and other vulnerable groups should be addressed. This may be especially important in areas of customary tenure where women may be disadvantaged. Access to land for some groups may be prescribed, e.g. in some cases a peace agreement may require the allocation of land to former soldiers.
- 5.19 **What land is needed for agricultural purposes?** The short-term and longer-term needs for land should be identified for the various stakeholders. The analysis should address the need for land for different purposes, e.g. for sedentary farmers and nomadic pastoralists. An assessment for land for grazing should take into account plans for restocking of livestock herds.
- 5.20 **What land is needed for residential purposes?** Land may be needed for the creation of land parcels in urban and peri-urban areas for people who

do not wish to return to their rural homes. An assessment of longer-term solutions should address housing needs, e.g. through an inventory of damaged residences and the need for reconstruction.

5.21 What land is needed for government operations and infrastructure?

Government agencies require suitable premises in order for them to carry out their operations. In addition, lands may be needed for the construction or restoration of public services. There is a danger that the acquisition of property for such purposes can become disorderly through lack of co-ordination across government, lack of understanding of government needs, lack of appreciation of budget limitations, and a rush to acquire and control resources as part of “empire-building” by some agencies.

5.22 What land is needed for temporary use? Land may be needed for:

- Cultivation of seasonal crops to improve household food security and for grazing cattle;
- Shelter to meet the immediate needs of returning people and others with emergency housing needs;
- Facilities for peace-keeping forces, relief organizations and international aid workers.

AVAILABILITY OF LAND

5.23 What public land has been abandoned or is otherwise available? Is

there public land that can be used either permanently or temporarily to settle people who have no other place to go? Has public land already been invaded by squatters?

5.24 What private land has been abandoned or is otherwise available? In

some cases the owners of land may not return. A challenge will be defining when land is “abandoned”. A government may consider land to be abandoned while its owners may consider their absence to be only temporary.

5.25 What lands are free of mines and what lands are mined? An inventory

of lands that are mined should be prepared. The existence of mines may

prevent people from returning to their land even if they have acquired the legal right to do so. Priority for areas to be de-mined should be established.

OPERATIONAL FRAMEWORK

- 5.26 What land administration agencies remain?** Agencies responsible for aspects of land administration should be identified, e.g. for:

- Defining rules for the allocation of land;
- Adjudicating claims for rights to land;
- Controlling land that could be used by refugees and IDPs;
- Managing land records including land registers and cadastres.

How well do these agencies work together? What strategies can be developed to co-ordinate their functions?

- 5.27 What technical and managerial expertise remains?** The staffing levels in the agencies should be identified, and the availability of skills and gaps in capacity should be assessed. Many people may have fled. Poor educational and training standards within the land administration, reflecting general education standards, may mean that many employees are not well equipped to carry out their duties. Professionals may not know about new technologies or managerial concepts.

- 5.28 What buildings are available for the offices of agencies?** Widespread destruction of buildings will limit the operations of land administration agencies. The assessment should identify where offices are located, the extent of damage to buildings, and what repairs can be carried out in the short-term to make them functional. The assessment should include identification of space for archives as well as operations.

- 5.29 What equipment exists?** The equipment available should be assessed. Surveying and computer equipment may be obsolete or may have been destroyed.

- 5.30 What land records exist?** Land records such as land registers, cadastral maps and survey field records are important sources of evidence for proving

rights. Secondary information, such as telephone directories, electricity accounts and property tax records, may also be valuable in supporting claims of rights to land. Land records may be destroyed but there have been many cases where land administrators removed documents during the conflict and hid them. Land records should be analyzed, for example:

- What land records have been destroyed?
- What records still exist and where are they?
- What records are in danger of being destroyed and damaged, and what immediate steps can be taken to preserve them? To where should they be moved?
- What is the quality of existing land records? Do they reflect the true situation or have they been illegally altered? Copies may be of different dates and in different conditions.
- What procedures, such as scanning, can be used for protecting land records?
- What copies of land records exist, what condition are they in, and how up-to-date are they?
- Are there any legal restrictions related to the management of land records? For example, in some countries, land registers are regarded as confidential records of the judiciary system. In addition, legislation may prescribe where land records are to be stored and, in such cases, special legislation may be required to allow the relocation of records.

5.31 Is corruption a factor? Is the system corrupt, with bribes being required to facilitate action? Are land allocations transparent? Who benefits from the corruption?

5.32 What changes can be made to make the land administration system operational? Becoming operational as quickly as possible may require making minimal changes to the land administration system. The introduction of extensive changes may result in substantial delays in progress if the experiences of returning staff are not useful with the proposed system.

POLICY FRAMEWORK

- 5.33 **What is the scope of government power?** In order for access to land to be improved, the mandate of the government should allow it to undertake quick and decisive actions. The power of the government may depend on whether it is an internationally mandated transitional government or an independent national government. However, limitations may exist with both types of government. In some cases, internationally-led transition governments have operated in unclear constitutional situations and with an unclear legal mandate; this has created confusing and contradictory aspects of land policy. Independent national governments may be weak and face strong internal opposition which can discourage the development of certain aspects of land policy.
- 5.34 **What means are available to develop and implement land policy?** A limited availability of national experts may restrict valuable local knowledge from being included in policies. Limitations in local capacity to implement policy initiatives will delay progress in establishing the processes of land administration. Limits on resources will affect the ability of land administration agencies to employ suitable staff, purchase technical equipment and provide training. Capacity for land administration may be affected by other limitations. The destruction of basic infrastructure may limit communications, the establishment of offices and records, and the operation of equipment requiring electrical power.

LEGAL FRAMEWORK

- 5.35 **What legal institutions remain?** Relevant legislation should be identified. See Box 6. The legal analysis should address:
- What are the major problems with existing legislation and how can it be improved? In some countries, problems with legislation may be relatively localized. However, in countries that were in a transition from a communist system to a market-oriented system, land laws related to conflicts were part of an entire legal system that had to be transformed.
 - How can changes be introduced to legislation? What are the procedures for promulgating laws? Are they complicated and time-consuming?

BOX 6

LEGAL ANALYSIS

Examples of laws to be analysed include:

- The Constitution;
- Land management laws;
- Natural resource management laws including environment, forestry and water;
- Land registration and cadastre laws, including transfers and mortgages;
- Land use planning and subdivision control;
- Leasing laws;
- Family laws;
- Inheritance laws;
- Privatization laws;
- Property taxation laws;
- Local government laws;
- Customary tenure laws;
- Abandonment and restitution laws, including prescription or adverse possession;
- Laws on expropriation of land and compensation;
- Other laws that may be contrary to international legal principles and which affect property rights.

- What legal mechanisms exist for allocating land rights, including restitution and resettlement? Existing legislation may be cumbersome and unsuited for a large-scale programme of restitution, especially when claimants do not have legal documentation to prove their rights.

5.36 Where customary tenure exists, the legal analysis should assess:

- What legal mechanisms exist to recognise and protect customary tenure? Are there practical ways to register rights to community land such as ownership in undivided shares or as family land? Are there other ways to strengthen customary rights?
- What legal provisions exist for recognizing a community as a body with legal authority, such as an association or cooperative? What are the conditions required to acquire this legal authority?

- What legal provisions can be used to protect pastoral routes for transhumance?
- 5.37 **Does the legal infrastructure discriminate against certain people?** Discriminatory laws often characterize the periods before and during the conflict. They even may have been a significant factor in the outbreak of the conflict. Does legislation exclude or restrict the activities of classes of people? In some cases laws may not be discriminatory, but they may have been used in a discriminatory manner during the conflict. The experience may have resulted in feelings of resentment to those laws. Are directives and guidelines needed to establish how existing legal provisions should be used and interpreted under certain conditions?
- 5.38 **What local expertise is available?** Local knowledge of the law and practice should be used wherever possible. It is likely that the government will have to rely on some, if not most, of the existing legal framework as the basis for its operations in the post-conflict period, although this may not be acceptable to some groups of the population that had earlier experienced discrimination within that legal framework.

INTER-AGENCY COORDINATION

- 5.39 **What ability is there to communicate effectively with other government bodies, international organizations and NGOs?** A lack of co-ordination within government and with other organizations may lead to duplication of activities and inconsistent development and implementation of land policies.
- At the level of the government there may be an uncoordinated and unsustainable rush to create government bodies. In some cases there may be uncertainty as to which political body consultation should be directed. For example, a body created may be disbanded at a later stage. Actions of agencies are typically not co-ordinated at the beginning. For example, a land registration agency may not be ready to deal with large numbers of documents issued by the agency that adjudicates land claims.

- International organizations may establish their own agenda, without effective co-ordination with the work of others.
- NGOs may operate locally with no formal forum to co-ordinate activities with the government and others.

COMMUNICATION

- 5.40 **What ability is there to communicate?** A lack of ability to communicate effectively with people can lead to misunderstandings, mistrust, lack of cooperation and even violence. In a post-conflict setting where international specialists are attempting to identify policy and the legal and administration systems, a lack of knowledge of local languages can be a serious obstacle to operational effectiveness. There may be a need to apply a substantial amount of money and effort to provide interpreters. Interpretations and translations can be subject to deliberate distortion, with alterations in the meaning and intent of material. It may be necessary for several translators to review translations of particularly sensitive and important material to ensure that the correct message will be presented.
- 5.41 There may be a limited ability to communicate effectively because of ongoing local conflicts and limitations with infrastructure such as telephone, electricity and roads. The extent to which people in rural areas are served by radio, television and newspapers should be assessed.

IDENTIFICATION OF PRIORITIES

- 5.42 **What are the priority areas?** The analysis should establish the scope, nature, intensity and distribution of land tenure problems in the country. It should identify how these problems are to be prioritized. It should assess the government's ability to address them, including the provision of any legislation needed to provide the legal authority for a land administration agency to undertake actions.
- 5.43 **What issues should land administrators be wary of addressing?** Issues that require caution should be identified. For example, in some cases there

may be valid reasons for not addressing issues related to customary law, and particularly if such law is not well understood by international personnel. The temptation to exclude many issues should be resisted; issues may be highly sensitive but not addressing them will not make them go away. The analysis should attempt to see how issues can be refocused to make them less divisive, e.g. specifying the allocation of land to a broad cross-section of society rather than to a single group.

DESIGN AND IMPLEMENTATION OF SHORT-TERM ACTIONS

- 5.44 Many key issues such as restitution and resettlement can be addressed only after the rules have been agreed upon and the necessary legislation and enforcement mechanisms have been put in place. They form part of the longer-term response, and introducing such initiatives in the short-term may cause problems if the approaches used differ from the rules that are adopted in later legislation. However, the analysis during the emergency stage may identify a number of interim policies and short-term actions that can be implemented. Possible actions may include the following.
- 5.45 **Getting land on the agenda.** If land tenure is not on the agenda, then time and effort should be expended to explain the importance of access to land to the government and others. The message should be clearly stated for policy-makers and administrators to understand. Access to land, while potentially being the source of emergency food, shelter and aid, can quickly become the fundamental element of political, social, cultural and economic stability. For these important reasons, the development and implementation of policies to facilitate access to land, and for its administration, should be a political, social, cultural and economic priority for a government in a post-conflict setting.
- 5.46 **Establishment of co-ordination mechanisms.** Co-ordination of government policies with regard to their implications for access to land may be achieved through the establishment of inter-agency committees. A "lead agency" should be designated within government to address issues of access to land and tenure security. Effective co-ordination mechanisms between international aid

organizations, and between such organizations and the government, should be set up to improve the sharing of information and proposed actions related to access to land and land administration.

- 5.47 **Translation of legislation and other documents.** Essential legislation may have been translated from local languages for use by international specialists during the initial analysis of the legal framework. The quality of such translations should be carefully assessed and, where necessary, new translations should be prepared. Other legal and policy documents that impact on access to land should be translated as appropriate for use by the international specialists. Translators should have good knowledge of the technical content (e.g. law, economics, surveying) of the documents to be translated.
- 5.48 **Refitting of land administration offices.** Office space for key land agency units should be refitted and secured in order for them to be able to operate.
- 5.49 **Protection of land records.** Available land records should be moved to safe locations and copies of them should be made. Attempts should be made to retrieve missing land records.
- 5.50 **Short-term training courses for land administration staff.** The analysis is likely to show areas where skills are weak or missing. Short courses should be designed and implemented for key personnel to rebuild the managerial, technical and administrative capacity of land agencies. For example, early training might include topics such as project management, and use of computers and modern surveying equipment.
- 5.51 **Structures for communication.** Rumours may create insecurity and fear if people do not have a good knowledge of what is happening. Communication channels should be established to disseminate information in local languages through media such as radio, television and newspapers. Establishing good translation and interpretation facilities can be important to ensure that individual discussions, workshops and documents do not result in misunderstandings.

- 5.52 Short-term suspension of evictions.** To prevent people from being unfairly evicted, people who are without alternative accommodation may be allowed to remain in possession of property for a defined limited period.
- 5.53 Suspension of new large allocations of land and the assessment of existing allocations.** In many conflicts people have taken opportunities to privatize vast land holdings. Applications for temporary or permanent allocations in the form of concessions or grants of large areas of public land should be suspended and analysed to see if they represent the most appropriate use for the land. Cases where such allocations have already been made should be reviewed to see if there are valid reasons for the state to recover the land.
- 5.54 Allocation of temporary use rights.** Until legislation is passed, temporary rights to use land might be granted. Temporary allocations should be clearly defined in order to avoid potential conflicts. It may be important to separate the ownership of land from its use. For example, there may be urgency to use productive land for economic recovery but this should not result in the legitimate owner losing the land. Owners may be willing to make their land available if short-term leases can be devised which protect their rights as well as the rights of the tenants. Short-term leases may allow vacant public lands to be used to produce seasonal crops. The use of simple, yet equitable, leases can be promoted. Information on establishing good leasing arrangements is available in FAO Land Tenure Studies 2 "Good practice guidelines for agricultural leasing arrangements", and FAO Land Tenure Notes 1 "Leasing agricultural land".
- 5.55 Temporary measures to deal with land claims.** Before the rules for treating land claims and land disputes are finalized, people may be able to inform a land agency of their intention to apply for their land to be restituted. The agency may hold this information on file until the process for resolving land claims can be implemented.

6. Assistance with the development of policies

- 6.1 As conditions improve, attention can shift from carrying out emergency activities to the development of policy. The development and implementation of policies to facilitate access to land, and for its administration, should be a political, social, cultural and economic priority for government in a post-conflict setting. Land tenure and land administration specialists are likely to encounter a wide range of policy issues (see Box 7). So far as possible, land tenure should be dealt with in a broad policy framework as distinct from a series of separate issues. This approach acknowledges the interrelatedness of issues and encourages co-ordinated responses to issues within and between the relevant institutions.

BOX 7

POLICY ISSUES RELATED TO ACCESS TO LAND

Policy decisions are likely to be required for a number of issues such as:

- Provision of emergency shelter and housing.
- Development of a housing strategy for returning refugees and IDPs.
- Temporary land allocations of vacant public land or abandoned private land for government and commercial operations, and for returning refugees and IDPs.
- Prevention of illegal occupation of land and buildings by warlords and criminals.
- Development of an agricultural and rural development strategy for returning refugees and IDPs.
- Restitution of land to its lawful owners through the establishment of mechanisms to resolve land claims and land disputes.
- Establishment of procedures to compensate people for whom restitution is not possible. Compensation is likely to be in kind if funding cannot be provided.
- Establishment of fair procedures for the eviction of unauthorized occupants.
- Roles and responsibilities for land administration: central and decentralized state agencies, customary authorities.

- 6.2 In practice, in the early stages of the post-conflict period the government is likely to find itself reacting to land issues rather than anticipating them. The ability to plan and develop policies for access to land and land administration is usually limited because of a lack of experienced personnel and funds, and the destruction of infrastructure and equipment. Progress may be slow at first because of problems such as poorly kept records, bureaucratic and political obstructions, over-burdened judicial courts and laws that are ineffective or cannot be enforced.
- 6.3 It may be difficult to implement large changes to land administration in a short time. The development of detailed policies in a post-conflict country may be a lengthy process, in part because of the sensitive nature of some of the issues. Particular aspects of access to land may be hotly debated within factions of the government, and within the wider society. At the same time, there may be great pressure to rapidly implement large new programmes to restitute land or to resettle people.
- 6.4 The difficult and quickly changing circumstances of the post-conflict setting may require a flexible and practical approach to the development of policies. Policies may have to be adjusted to address new circumstances or because they have had unanticipated negative consequences. A flexible approach can allow policy-makers to test policy options without a detailed legislative framework that requires continual amendment. Such approaches should still address the need for transparency of process and for community consultation. A need for flexibility may diminish as circumstances stabilize.
- 6.5 Among the challenges is how to implement a land administration system with the small number of skilled staff available. For example, what adjudication system can be developed so that it can function with the resources available? Personnel policies will be required to address the challenge of how to build capacity rapidly in order to provide land administration services. How can additional people be trained? A further challenge is the ability to provide services throughout the country. How rapidly can government expand and still remain able to provide services in

a sustainable manner? Capacity in regions is likely to be lower than in the capital. Can local governments provide needed land administration services or should support come, even if only initially, from a centralized agency? The only responses to this reality are to prioritize the issues that must be dealt with, and to ensure that policy objectives are reasonable. See Box 8.

- 6.6 Policies must be translated into law and a legal infrastructure is needed for the implementation of the mandate defined in the policies. In a post-conflict country, the development of laws may be adversely affected by inexperience of the law-making body and a heavy legislative workload, with new laws being required for many aspects in addition to land tenure. An over-reliance on international advisors in the development of legislation may result in elements of foreign laws being imported without an adequate assessment as to whether they would work under local conditions. In order for land legislation to be consistent with local views as well as international human

BOX 8

POLICY OBJECTIVES

Reasonable policy approaches in a post-conflict setting may include:

- Developing policies and laws that are realistic about the ability to change long-standing behaviour.
- Developing policies in relation to land issues that can be tailored to the needs, priorities and practices of people.
- Simplifying procedures for the implementation and enforcement of policies.
- Making policies and law realistic with regard to the government's financial and institutional capacity to implement them.
- Making policies and laws capable of being understood and used by the general population.
- Recognising that some policies may create conflict even if they appear otherwise to be sound.
- Developing policies and laws in cooperation with a cross-section of society, and within a framework of reconciliation and compromise.

rights conventions, the development of law should be based on discussions with stakeholders such as national lawyers, judges and other property specialists, and international advisors. Such discussions should form the basis for proposals for property legislation.

- 6.7 If there is a lack of basic legislation, there may be pressure to carry out certain activities before the enabling laws are developed. The danger is that legislation, when eventually passed, may differ from the early concepts at the time the activities were carried out. To avoid problems, the elapse of time between starting the work and the preparation of the legislation should be monitored.

RESTITUTION

- 6.8 Unauthorized occupations of land are an unavoidable part of post-conflict circumstances. They may not necessarily be a problem and may provide shelter and a source of food production for people who have no other alternative. But problems will arise in the medium to long-term if a solution to unauthorized occupations is not found. Solutions for land claims, however, should not be seen as a simple declaration of entitlement to land rights but should also strive to support national reconciliation. Such solutions are likely to require a co-ordinated approach to land claims and housing, and may also require the use of public lands.
- 6.9 Organizational structures will need to be established, for example:
- Legal aid units should inform people of procedures and assist them to complete necessary forms.
 - A claims processing unit should collect claims and ensure that they meet the administrative requirements before submitting them for a decision.
 - Decision-making facilities will be needed to resolve the cases. A variety of options may be possible. See Box 9. Mediation facilities may assist people to negotiate a settlement and may be much quicker than courts to establish. Adjudication facilities such as a tribunal or court may provide a judgement on claims. Specialized land courts may be

BOX 9**DISPUTE RESOLUTION APPROACHES**

Adjudication is the process of providing a judgment in a dispute. Parties in the dispute may provide evidence but they do not participate in making the final decision.

- Formal courts of law are common throughout the world. Specialized land courts exist in some countries.
- Land commissions are formal bodies to investigate land issues or implement land policy. They are sometimes created to adjudicate land claims in titling and registration projects. They are less formal than courts and often travel to communities.
- Arbitration is the process of resolving dispute through the use of an impartial person known as an arbitrator. It is less formal than a court although the role of the arbitrator is still usually governed by legislation. The process is often quicker than the court system.

Negotiation is the process where the parties jointly reach an agreement. Negotiated settlements can be effective when the dispute is moderate, and when the parties are interested in reaching a solution.

- Customary negotiation mechanisms are commonly used in many customary societies to resolve land tenure conflicts. The process is usually voluntary. Community leaders may present customary norms but the rules of evidence may be treated flexibly according to the case.
- Mediation is the process where an impartial person, the mediator, helps the parties to work out their own mutually agreeable solution.

These approaches may be used in combination. Typically negotiation is tried first. If the parties fail to reach agreement, the case can go to arbitration or some other form of adjudication.

considered in order to take pressure off conventional civil courts. Mobile courts may be a way of addressing claims in remoter areas but their effectiveness should be assessed for resolving legitimate claims from people still living outside those areas. An appeal system may be necessary.

- An enforcement unit should ensure that judgements are implemented. It may be necessary to evict people who do not obey an order of the court to vacate property. It may be necessary to ensure that local and national bodies are legally obliged to accept decisions of the restitution agency. The extent to which international bodies may participate in the process will have to be determined.

6.10 The rules of the adjudication system will have to be defined, e.g.:

- The types of claims that are eligible for restitution.
- The date for which claims are valid. Claims for property taken before a certain date might not be eligible for restitution.
- The people who are eligible to submit claims.
- Evidence that is acceptable to support restitution claims. Land records can be an important form of evidence but in many rural areas formal land records may not exist. It may be necessary to include other types of evidence, including oral evidence.

6.11 The system should be accessible to people. People throughout affected areas should be able to easily submit claims. However, care must be taken to ensure that systematic approaches are followed throughout the country as decentralized offices without sufficient expertise or capacity may result in the imposition of arbitrary rules. Forms and information on the process should be in local languages, and should be prepared in consideration of the literacy levels of the population. A decision will have to be made whether people should pay fees for the process. If so, the fees should be affordable to people. At the same time, the system should be affordable to the government. The design of the system should reflect the limited resources available. Costing of options is needed to ensure that solutions that are designed are capable of being implemented.

6.12 Compensation may be proposed for people who cannot have their land restituted. The compensation may be equivalent land located elsewhere.

Compensation schemes in the form of money have been less successful, as national governments typically have scarce resources following a conflict and donors are reluctant to capitalize compensation funds.

- 6.13 Evictions are a necessary part of land administration following a conflict. An eviction process should be designed and enforced under appropriate circumstances. The process should set clear standards for responsibilities for carrying out evictions and for the conditions in which they will occur in order to prevent misuse or create further problems of displaced people. For example, criteria for eviction may include that alternative accommodation is available for the occupants, and that the property will be put to immediate use following the eviction. A major test will be the extent to which powerful people can be evicted, i.e. the application of the rule of law.

RESETTLEMENT

- 6.14 The need to provide land for people who are landless or who cannot return to their homes will be unavoidable. The challenge is to find land that is available for resettlement purposes. Rural and urban linkages should be examined as many people may move from rural areas to urban centres in order to seek a living.
- 6.15 Public land, whether abandoned or unused, is likely to be part of the longer-term solution. Public lands may be administered by a number of different agencies. Mechanisms may have to be developed to transfer control of the lands for the purposes of resettlement. This may not be a simple matter if the agencies controlling the public lands consider themselves to be the “owner”, and view the land as part of their own assets and a source of their power and prestige. Public lands may also be controlled by local governments. Their low level of capacity may have to be supplemented in order for the use of their land to be properly planned.
- 6.16 The use of private land that has been abandoned may be simple in some cases, e.g. when large land holdings allocated before the conflict have been abandoned and are unlikely to be reclaimed. In other cases, the use of

abandoned private land, and land under customary tenure, may be complex. Care will have to be taken to ensure that problems do not become magnified, with the government creating a dispute between itself, the owners of the land, and the people who have been resettled. The nature of rights attached to land being used for resettlement should be researched carefully to ensure that users of the land will not be inadvertently dispossessed as a result. It is essential that the rights of the host communities are addressed as well as the rights of the people to be settled. See Box 10.

- 6.17 Vulnerable groups may require separate processes for the allocation of land. Women, and widows in particular, may have difficulty getting access to land under customary law. The needs of the vulnerable poor may be

BOX 10

PROTECTION OF RIGHTS OF HOST COMMUNITIES AND PEOPLE TO BE RESETTLED

In the case of resettlement, the rights of host communities should be addressed, for example:

- What are the statutory and customary rights of local people (as individuals and groups) over land and other natural resources?
- How are these rights acquired?
- What is their quality under normal circumstances and under pressure?
- What is their legitimacy and legality in a local and regional context?
- How will their rights be affected by the allocation of rights to settlers?
- What problems may be created by settlers?

The rights of people to be resettled should be addressed, for example:

- What mechanisms can provide IDPs and others with legal rights for land that they have occupied for some time without complaints?
- What are the mechanisms for settlers to get access to land and natural resource use?
- Who issues these rights?
- What is the quality of these rights?
- How do households headed by women get access to land and other natural resources and what is quality of these rights?

sufficiently different from others, and they are less likely to be able to pay rent and for services. If large numbers of people comprise vulnerable groups, the limited ability of government may require simplified procedures for applications and settlement. Although vulnerable groups should be provided with permanent land as soon as possible, it may be necessary to provide them initially with temporary rights to land with the understanding that they may be required to relocate in certain circumstances.

ESTABLISHMENT OF AN OPERATIONAL SYSTEM

- 6.18 What sustainable administrative infrastructure is required to implement policies to improve access to land? The answer will vary according to a number of factors including the ability of land administrators to implement the policies. Financial matters will play a large role in the determination. On the one hand, investments required to re-establish the system are likely to be beyond the capacity of the government to finance. The extent of the investments made will depend on the willingness of the international community to fund them for a number of years. On the other hand, a need to keep the costs of services affordable to citizens is likely to result in low revenues for services provided by the land agencies.
- 6.19 **Mandate and structure.** Institutional responsibilities must be assigned for administrative issues such as restitution and resettlement, evictions, management of state lands and abandoned private lands, and the land registration and cadastral system. Functions for dispute resolution or carrying out evictions are commonly separated from functions related to the management of land records or of land itself. The assignment of responsibilities for land administration issues to a single agency may provide for an administratively simple solution as a single agency may reduce duplication and improve co-ordination. However, forcing the solution of a single agency is unlikely to result in these benefits if there are historical reasons and local preferences for responsibilities to be divided among several agencies.
- 6.20 Claims for restitution and other land disputes require decisions over rights to property. Whether such decisions can be made by a judicial court or by

an administrative land agency may be defined in the constitution. If a judicial arrangement is required, it may be necessary to create a special land court if the court system is over-burdened with criminal and other civil cases.

- 6.21 Regardless of the structure developed, there will be a need for project management approaches to establish good co-ordination between processes, e.g. to ensure the flow of information between agencies responsible for land restitution and land registration.
- 6.22 **Personnel.** The recruitment policies for land agencies should be defined. Some trained staff may have been involved with malpractices during the conflict, or may be regarded as objectionable because of their collaboration with a particular group. However, they may have the knowledge and experience needed to re-establish operations. The costs of excluding access to the potentially valuable stock of knowledge held by such people should be weighed against the benefits of doing so. Lower-ranking personnel may not be as controversial as those who held senior positions. Staffing plans will need to address these constraints.
- 6.23 Standards for working conditions should be established. Sustainability of operations depends on competent and motivated staff. People are unlikely to remain motivated if they are poorly paid and work in poor conditions, and if promotion depends on personal connections rather than qualifications or competence. The situation in land agencies can become quite unstable with large numbers of staff being rotated to other units for political reasons. Such mobility can cause a loss of morale, especially if highly qualified people are replaced by people with less ability and knowledge.
- 6.24 Training programmes should be designed to ensure that people in land agencies and courts are aware of new land policies and legislation. Managerial staff should be trained on planning and managing the work programme. Professional staff should be trained to carry out new technical responsibilities. Building capacity for staff in land agencies should include building ideas and visions of the new land agencies, creating professional

networks, and working with other stakeholders to understand their needs and requirements. An important part of building capacity is through exposure to best practice in other countries in the form of study tours, and by participating in international conferences. Training programmes should be continuous to address changes to policies, the introduction of new policies, and the change in staff through promotion, relocation or for other reasons.

- 6.25 **Premises.** An important part of the re-establishment of operations will be the renovation of offices, courtrooms and archives. The phasing of the opening of new offices has to be planned with the schedule of restitution and other processes. It is important for land administration operations to be accessible by the general public but this may not always be the case. However, if offices are blocked from the public because of security concerns, people may not be able to take part in the processes to improve access to land and land administration.
- 6.26 **Equipment.** The destruction or obsolescence of equipment may mean that equipment has to be borrowed or hired until the arrival of newly purchased equipment. Sources for the temporary supply of equipment may have to be located.
- 6.27 **Land records.** Land agencies will be required to manage increasing volumes of land records, and secure storage facilities will be required. The growth in land records should come in part as missing land records are relocated. Increases in volume will also come as restitution and resettlement programmes proceed. The storage requirements for paper documents may diminish if computer records are accepted for legal purposes. Introducing digital technology will require the development of a robust system with standard security features including the archiving of digital records in a site that is separate from the registry office.

CO-ORDINATION AND COMMUNICATION

- 6.28 **Co-ordination between stakeholders.** The co-ordination mechanisms established during the emergency phase may need to be adapted and

strengthened during the period of active policy-making. As government develops during the post-conflict period, it may formulate policies on a wide range of matters that impact directly and indirectly on the land administration system. Emergent policies in areas such as humanitarian aid, migration and finance may need to be reviewed and an assessment made of their potential impact on land administration. Information on expected impacts of such policies will need to be conveyed to a policy forum such as a co-ordination group.

- 6.29 Consultations with stakeholders should begin as early as possible in the process in order to promote a national discussion on the provision of access to land within the institutional framework being developed. Information on restitution and resettlement programmes should be supplied to the public at an early stage, and not just when legislation is drafted. Preparation and correct timing is important as ideas often need to be communicated early in order to give time for discussion with all stakeholders. In particular, procedures on land access should be co-ordinated with local institutions. Such co-ordination should provide a link between the national land agencies and local communities. The consultation should help local communities to view decisions concerning access to land as being legitimate.

- 6.30 **Communication.** Programmes should be implemented to keep the public informed of the development of policies and legislation. Such communication reduces confusion and improves transparency of government. Information should also be given to advise people how to protect their land rights, and on the rules and procedures established for restitution and formalization of rights. A wide range of messages should be created for different audiences, and using different media such as information leaflets, posters, videos, newspapers, radio and television.

7. Assistance with the implementation of policies

- 7.1 Technical aspects of land administration, such as the establishment of registration and cadastre systems, are not ends in themselves but are the means to respond to the needs of people for more secure access to land. It will be necessary to ask if the policies being implemented are working. Processes should be developed to monitor and evaluate the implementation of policies for access to land. Because of the complexity of the situation, the effectiveness of policies is likely to be mixed. The measurement of the procedures and outputs of policies should produce more accurate data on which to base future policy initiatives.
- 7.2 The ability to monitor and evaluate policies for access to land may be limited in the early stages of the post-conflict administration. Pressures for the rapid implementation of policies for access to land may mean that there is no time to review the effectiveness of the policies and their procedures. There is also likely to be a shortage of staff with expertise in monitoring and evaluation.
- 7.3 There may be methodological problems in monitoring and evaluating programmes to provide access to land and security of tenure. Establishing the appropriate indicators for analysis may be the subject of considerable debate. In the post-conflict setting difficulties are magnified as factors such as the destruction of land records are added to the general problems. Simple quantitative analysis is often impossible or is of limited value. Attempts to obtain useful data from the field can be complicated if it is too dangerous to collect data in some areas. Other difficulties include a continuing fear within the population to speak to authorities, the circumstances being too changeable to produce reliable data, and limited resources available to collect data.
- 7.4 What indicators should be looked to when assessing the effectiveness of the implementation of strategies to improve access to land? Because of the

complementary but individually specialized aspects of the various strategies for access to land, there are likely to be variable indicators for the purposes of monitoring and evaluation. Indicators should be of a type that adequately identify the true circumstances of access to land for women and other vulnerable groups. This implies that qualitative indicators should apply as well as quantitative ones. See Box 11.

BOX 11

INDICATORS FOR MONITORING AND EVALUATION

Preliminary evaluations and indicators

There may be a lack of reliable data in the post-conflict setting from which to make proper assessments of land tenure problems. Some quantitative data such as land records may have been destroyed in conflict thus preventing the ability to make a quick assessment of official rights before the time of conflict. Qualitative data such as assessments of the fairness of land laws and the nature of security afforded by land tenure systems may be important for the purposes of policy development and re-establishing the operations of government. However, they may be practically irrelevant if the laws are ignored and the only type of security of tenure is dependent on occupation and the amount of force required to maintain it.

Indicators for policy implementation

A variety of policies for access to land may be applied. The appropriate indicators to assess the effectiveness of policies will depend on the type of strategies being implemented. In some post-conflict settings, policies on access to land have employed some or all of the following approaches:

- Land legislation;
- Adjudication procedures for land claims and disputes;
- Existing land administration systems;
- Housing strategies;
- Evictions procedures;
- Administration of state-owned land;
- Administration of private abandoned land;
- Transparency.

- 7.5 Policies may not be effective because they have been poorly designed or are trying to do the wrong thing. Monitoring and evaluation should provide signals that such policies should be reconsidered. But even good policies may not be effective if there are difficulties in implementing them. These difficulties may arise because of limitations with human resources, or because information on the policies has not been adequately conveyed. Monitoring and evaluation should address these issues.
- 7.6 Generally, the human resources available will not be adequate to deal with the implementation of policy in all areas. There are likely to be constant problems of staffing. The capacity of local staff to implement policy may be limited. Training courses should be held at regular intervals. Policies such as decentralization may affect the requirements for staffing. For example, a decision to establish offices in all districts of a country will be unsustainable in the short-term if resources are not available. Geography, along with inadequate transportation and communication infrastructure, may make it difficult to monitor what is happening at regional offices. In practice, a decentralization policy may be forced to restrict implementation to a few areas initially in order to achieve results.
- 7.7 The effectiveness of the communication campaigns should be monitored. Initial efforts to inform people of their rights and of programmes to provide access to land may have limited success. Awareness of policies and actions may take a long time to establish, and activities may need to be repeated frequently. The messages may need to be continually refined for particular audiences.

8. Final comments

- 8.1 Secure access to land and other natural resources is a crucial factor in the recovery and reconstruction of a country after violent conflict. It is essential for the realization of the right to food and the Millennium Development Goals, particularly as they relate to eradicating extreme hunger and poverty, promoting gender equality and empowering women, and ensuring environmental sustainability.
- 8.2 Problems related to access to land after violent conflicts are often immense. The operations of government in the post-conflict period are usually chaotic and sometimes dysfunctional. Expertise to develop and implement policies is typically limited. Co-ordination within government is often weak. A lack of expertise within government means that partnering with international organizations and NGOs can be critical to the co-ordinated development and implementation of appropriate strategies to provide access to land.
- 8.3 Land administrators providing technical assistance during the post-conflict period can play an important role to ensure that issues of land access remain on the agenda, and that they are not swept aside because of the perceived difficulties of the problem. They can play a significant role in facilitating discussion, co-operation, co-ordination and partnership in the process of providing access to land in the post-conflict setting. See Box 12.

BOX 12

ROLE OF LAND ADMINISTRATORS AS ADVISORS

Land administrators providing technical assistance can play an important role to ensure that access to land remains on the agenda, and that the problems are well understood.

Possible actions include:

- Develop partnerships with government, international organizations and NGOs to seek advice from stakeholders and to develop co-ordinated approaches to the development and implementation of policy.



- Gather relevant information on access to land and land administration.
- Report the characteristics of access to land to the government.
- Foster public debate and education campaigns concerning access to land, such as appropriate mechanisms for land restitution and resettlement.
- Identify critical issues on access to land that require immediate responses from governments and others, e.g. the particular difficulties faced by vulnerable groups.
- Ensure that the issue of access to land in the post-conflict period is treated within a framework of reconciliation.

Land administrators can play an important role to ensure that appropriate policies are developed and implemented. Possible actions include:

- Assist in the development of policies for access to land and land administration as part of a total, cohesive framework rather than a number of isolated policy initiatives.
- Assist in the development of policies that are in accordance with international conventions in regard to land.
- Listen to the arguments of stakeholders in developing policies that anticipate future needs.
- Assist in the development or re-establishment of land administration systems that promote and provide security for the short-to-medium-term until more detailed strategies can be developed.
- Assist in the decentralization of essential operations so that policies for access to land can reach people throughout the country.
- Promote justice and fairness in administrative processes by making procedures simple, transparent and fair for all users including vulnerable groups.
- Ensure that applicable human rights standards are applied in the development and implementation of land administration systems.
- Provide information about land rights and land administration services to affected groups.
- Partner with government for the provision of specialist services to provide access to land and tenure security.

This guide on *Access to rural land and land administration after violent conflicts* has been prepared to assist land tenure and land administration specialists who are involved with the reconstruction of systems of land tenure and land administration in countries that are emerging from violent conflict. Providing secure access to land is particularly complex in such situations. Violent conflicts typically result in the displacement of much of the population. At the end of the conflict, people returning home may find that others occupy their property. There may be several competing, legitimate claims to the same land as a result of successive waves of displacement. Many people may not be able to recover their lands and have to settle elsewhere. At the same time, weak capacity in central and local levels of government may hamper the process of resolving claims to land, and especially claims of the vulnerable which almost invariably include women and children, and may also include ethnic or political minorities.

The guide provides advice on specific issues that should be considered by land tenure and land administration specialists when working in post-conflict situations. It provides an overview of the conditions that typically exist in a country after a violent conflict, and shows why it is important to resolve issues of access to land and land administration. The guide identifies key aspects that should be analysed during initial assessments, and gives examples of short-term actions that may be implemented relatively quickly. It presents policy considerations for the restitution of land to rightful claimants and the resettlement of people who are landless or who cannot return to their homes.

ISBN 978-92-5-105343-0 ISSN 1020-3117



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TC/M/Y9354E/3/04 06/300